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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 **SERGIO ARTURO GAMEZ ZUNIGA)**

11 **Petitioner,)**

12 **v.)**

13 **CAMILLA WAMSLEY, et al.,)**

14 **Respondents.)**

Case No. 3:25-cv-6109

**EX PARTE MOTION FOR ORDER
TO SHOW CAUSE**

15
16 **INTRODUCTION**

17 **COME NOW, Sergio Arturo Gamez Zuniga, by and through undersigned counsel,**
18 **Ji Min Kim, respectfully moves this Court *ex parte* for entry of an Order to Show Cause**
19 **pursuant to 28 U.S.C. § 2243, directing Respondents to immediately justify Petitioner's**
20 **continued detention and to file a return within three (3) days. This motion is brought due to**
21 **ongoing unlawful restraint of liberty without access to bond, without judicial oversight, and**
22 **without initiation of removal proceedings through the filing of a Notice to Appear ("NTA")**
23 **with the Executive Office for Immigration Review ("EOIR").**
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1. Petitioner Sergio Arturo Gamez Zuniga is a lawfully employed H-1B nonimmigrant worker who was abruptly and unlawfully detained by federal authorities while traveling for work in Montana State. Although Petitioner had a pending renewal of status application and had committed no crime, he was taken into custody, transferred across multiple detention facilities, and ultimately confined at the Tacoma Northwest Detention Center, where he remains detained today.

2. Despite being held in federal custody for over thirty days, Respondents have failed to file a Notice to Appear (“NTA”) with the Executive Office for Immigration Review (“EOIR”). As a result, no removal proceedings have been initiated, jurisdiction has not vested with the Immigration Court, and Petitioner has been entirely deprived of the ability to seek bond or custody review. Respondents’ failure to commence proceedings has left Petitioner in legal limbo, incarcerated without charges, without judicial oversight, and without any statutory mechanism for release.

3. This Petition seeks immediate judicial intervention to end Petitioner's unlawful restraint of liberty. Immigration detention is civil in nature and must be tied to lawful process and legitimate government purpose. Where, as here, detention is prolonged, unreviewable, and untethered from any judicial proceeding, it violates the Due Process Clause of the Fifth Amendment and governing federal law. Habeas corpus is therefore necessary to restore Petitioner's liberty and to compel Respondents to either initiate proceedings and provide a constitutionally adequate bond hearing or release Petitioner immediately.

ARGUMENT

1 4. Respondents' failure to initiate proceedings, provide notice of available relief,
2 and afford Petitioner any mechanism to challenge his detention violates the Due Process
3 Clause of the Fifth Amendment. As the Ninth Circuit has repeatedly explained, and as this
4 Court has also held, detention without notice, opportunity to be heard, or procedural
5 safeguards is constitutionally infirm.

6 5. In addition, Petitioner was subjected to warrantless arrest and detention
7 without probable cause or exigent circumstances, in violation of the Fourth and Fifth
8 Amendments. Respondents arrested Petitioner without a judicial warrant, without presenting
9 probable cause, and without initiating any lawful process afterward. Even where a warrantless
10 arrest may be temporarily justified, the government cannot prolong detention indefinitely
11 without judicial authorization, a charging document, or bond review.

12 6. In *Andriasian v. INS*, the Ninth Circuit held that “[f]ailing to notify individuals
13 who are subject to deportation that they have the right to apply for ... withholding of
14 deportation ... violates both INS regulations and the constitutional right to due process.” 180
15 F.3d 1033, 1041 (9th Cir. 1999). That principle applies with equal, if not greater, force here,
16 where Petitioner has not even been placed into proceedings and has been wholly deprived of
17 a forum in which to seek any form of relief, including release on bond, which would be the
18 most appropriate type of relief on his particular situation.

19 7. More recently, the Ninth Circuit reaffirmed that constitutional protections
20 apply to every stage of removal and detention. In *Ibarra-Perez v. United States*, the court
21 confirmed that “there are restrictions on DHS’s removal authority” and held that DHS
22 “violates [noncitizens’] constitutional right to due process” where it fails to notify individuals
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1 of their eligibility for relief or withholds procedural protections. --- F.4th ----, No. 24-631,
2 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025). This principle is now well settled in this
3 District. See also *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D.
4 Wash. Aug. 21, 2025)

5 8. The Supreme Court has likewise emphasized that due process is not optional.
6 “No person shall be removed from the United States without opportunity, at some time, to be
7 heard.” *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (per curiam). Yet here, Petitioner has been
8 detained for weeks without jurisdiction vesting in Immigration Court, without proceedings,
9 and without access to bond, review, or notice of any rights. This is detention in a procedural
10 vacuum.

11 9. Habeas corpus exists to remedy exactly this kind of unlawful restraint. The writ
12 is “a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
13 372 U.S. 391, 400 (1963), overruled on other grounds by *Wainwright v. Sykes*, 433 U.S. 72
14 (1977). Congress codified this mandate in 28 U.S.C. § 2243, which requires that once a habeas
15 application is entertained, the court “shall forthwith award the writ or issue an order directing
16 the respondent to show cause,” set a prompt return, and hold a hearing without delay. The
17 statute further commands that courts “summarily hear and determine the facts, and dispose of
18 the matter as law and justice require.” *Id.*

19 10. The Supreme Court has rejected delay in adjudicating habeas claims,
20 criticizing the use of “comparatively cumbersome and time consuming procedure[s],” and
21 emphasizing the “more expeditious method...prescribed by the statute.” *Holiday v. Johnston*,
22 313 U.S. 342, 353 (1941). Habeas demands action, not administrative drift.
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1 11. Consistent with this statutory command and this Court's longstanding practice,
2 Petitioner respectfully requests that the Court itself effectuate service of the petition upon
3 Respondents to avoid further delay. Upon service, the Court should order Respondents to file
4 their return within **seven (7) days** and permit Petitioner to file any reply within **five (5) days**
5 thereafter. These deadlines are more generous than the statute requires. See 28 U.S.C. § 2243
6 (default return deadline of three days).

7 12. In addition, Respondents should be ordered to include **all defenses and**
8 **arguments** in their return and prohibited from filing any separate motion to dismiss. Habeas
9 procedure does not permit Respondents to evade the statutory framework through ordinary
10 civil motion practice. See *Browder v. Dir., Dep't of Corr. of Illinois*, 434 U.S. 257, 269 n.14
11 (1978) (explaining that Rule 12(b)(6) motions are inappropriate in habeas proceedings and
12 that the custodian's response must comply with habeas statutes); *O'Brenski v. Maass*, 915
13 F.2d 418, 420 (9th Cir. 1990) (citation modified) (same).
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15 13. Here, Petitioner remains detained without warrant, without proceedings,
16 without bond, and without judicial authority. The Constitution does not permit detention by
17 fiat. Due process requires notice, access, and a meaningful opportunity to be heard. Because
18 Respondents have denied all three, this Court should exercise its habeas authority without
19 delay and order immediate relief. Because Respondents have denied all three, habeas relief is
20 not merely appropriate, but required.
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CONCLUSION

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2 14. For the foregoing reasons, Petitioner respectfully requests that this Court order
3 Respondents to file a return to the Petition for Writ of Habeas Corpus within **seven (7) days**,
4 and permit Petitioner to file any reply within **five (5) days** after Respondents' return is filed.
5 Because Petitioner remains detained without proceedings, without bond, and without the
6 jurisdiction of Immigration Court having vested, there exists a substantial risk that

7 15. Respondents may attempt to transfer Petitioner to another facility or take
8 further adverse action without notice while this case is pending. Accordingly, Petitioner
9 requests that the Order to Show Cause require Respondents to provide at least forty-eight (48)
10 hours' advance written notice (or seventy-two (72) hours if such period includes a weekend
11 or federal holiday) before any attempt to transfer Petitioner from the Northwest Detention
12 Center, or to remove Petitioner from the United States.

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15 Respectfully submitted this **10th day of December, 2025**.

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17 I certify this motion contains 1,338 words in
18 compliance with the Local Civil Rules.

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